

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AN ACT

S
B

9
3
2
P
a
g
e

1

RELATING TO FINANCE; ENACTING THE STATEWIDE ECONOMIC DEVELOPMENT
FINANCE ACT; AUTHORIZING THE CREATION OF A STATEWIDE ECONOMIC
DEVELOPMENT FINANCE PROGRAM; AUTHORIZING THE ISSUANCE OF ECONOMIC
DEVELOPMENT BONDS, LOAN PARTICIPATIONS AND LOAN GUARANTEES ON
BEHALF OF ENTITIES ENGAGED IN QUALIFYING ECONOMIC DEVELOPMENT
PROJECTS; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--Sections 1 through 16 of this act may be cited as
the "Statewide Economic Development Finance Act".

Section 2. FINDINGS AND PURPOSE.--

A. The legislature finds that:

(1) an important purpose of government is to promote, support
and assist in developing a thriving economic base within the state; increase
opportunities for gainful employment and improved living conditions; assist in
promoting a balanced and productive economy; encourage the flow of private capital
for investment in productive enterprises; and otherwise improve the prosperity, health
and general welfare of the people of the state;

(2) in order to attract and encourage established businesses
to locate in New Mexico, to retain and expand existing New Mexico businesses and to
provide an environment that supports new and emerging businesses within the state,
New Mexico communities must be able to provide basic infrastructure and educational,
cultural and recreational facilities that require substantial financial resources beyond
those of many New Mexico communities;

(3) other states have agencies dedicated to providing
financing for economic development projects, which agencies work directly with the
state, cities, counties and regional economic development agencies to provide the
necessary financing related to retaining and attracting businesses and to provide

1 financing to qualified nonprofit corporations that provide community housing, SB
2 education, health care and cultural facilities;
3 (4) it is necessary to provide coordinated planning and 9
4 financing resources to address community and cultural infrastructure needs; and 3
5 (5) the combined expertise and resources of the economic 2
6 development department and the New Mexico finance authority should be utilized: P
7 (a) for the effective promotion of economic a
8 development within the state; 2
9 (b) to increase the gainful employment of the citizens
10 and decrease the cost of social services and unemployment compensation;
11 (c) to increase the tax base of the state; and
12 (d) to improve the prosperity, health and welfare of the
13 people of the state.
14 B. The purpose of the Statewide Economic Development Finance Act
15 is to stimulate economic development with a needed program in the public interest that
16 serves a necessary and valid public purpose.
17 Section 3. DEFINITIONS.--As used in the Statewide Economic Development
18 Finance Act:
19 A. "authority" means the New Mexico finance authority;
20 B. "department" means the economic development department;
21 C. "economic development bonds" or "bonds" means bonds, notes or
22 other instruments issued by the authority pursuant to the Statewide Economic
23 Development Finance Act;
24 D. "economic development goal" means the retention and expansion
25 of existing business enterprises, the attraction of new business enterprises or the
creation and promotion of an environment suitable for the support of start-up and
emerging business enterprises within the state, whether the business enterprises are
for-profit or not-for-profit;
E. "eligible entity" means the person operating a project; "eligible

1 entity" may include a for-profit business enterprise, including a corporation, limited
2 liability company, partnership or other entity, determined by the department to be
3 engaged in a project enterprise that serves an economic development goal and is
4 suitable for financing assistance;

5 F. "financing assistance" means financing provided by the authority to
6 eligible entities pursuant to the Statewide Economic Development Finance Act or the
7 New Mexico Finance Authority Act that may be in the form of economic development
8 bonds, loan participations or loan guarantees;

9 G. "local school district" means a school district in which is located
10 project property that has been or will be exempted from property taxes pursuant to the
11 Statewide Economic Development Finance Act;

12 H. "mortgage" means a mortgage, deed of trust or pledge of any
13 assets as a collateral security;

14 I. "opt-in agreement" means an agreement entered into between the
15 department and a qualifying county, a school district and, if applicable, a qualifying
16 municipality that provides for county, local school district and, if applicable, municipal
17 approval of a project, subject to compliance with all local zoning, permitting and other
18 land use regulations, and for payments in lieu of taxes to the qualifying county, local
19 school district and, if applicable, qualifying municipality as provided by the Statewide
20 Economic Development Finance Act;

21 J. "payment in lieu of taxes" means the total annual payment, including
22 any state in-lieu payment, paid as compensation for the tax impact of a project, in an
23 amount negotiated and determined in the opt-in agreement between the department
24 and the qualifying county, the local school district and, if applicable, the qualifying
25 municipality, which payment shall be distributed to the county, municipality and local
school district in the same proportion as property tax revenues are normally distributed
to those recipients;

K. "project" means the acquisition and use of land, buildings, other
improvements and other project property for use by an eligible entity as:

- 1 (1) industrial facilities;
- 2 (2) commercial facilities, including facilities for wholesale sales
- 3 and services;
- 4 (3) health care facilities, including hospitals, clinics, laboratory
- 5 facilities and related office facilities;
- 6 (4) educational facilities, including schools;
- 7 (5) arts and cultural facilities, including museums, theaters,
- 8 arenas or assembly halls; and
- 9 (6) recreational and tourism facilities, including parks, pools,
- 10 trails, open space and equestrian facilities;

11 L. "project property" means any land and improvements thereon,
12 buildings and improvements thereto, machinery and equipment of all kinds necessary
13 to the project, operating capital and other personal property deemed necessary in
14 connection with the project;

15 M. "qualifying municipality or county" means a municipality or county
16 that enters into an opt-in agreement;

17 N. "state in-lieu payment" means an annual payment, in an amount
18 determined by the department, that will be distributed to a qualifying county, a local
19 school district and, if applicable, a qualifying municipality in the same proportion as
20 property tax revenues are normally distributed to those recipients; and

21 O. "tax impact of a project" means the annual reduction in property tax
22 revenue to affected property tax revenue recipients directly resulting from the
23 conveyance of property to the department.

24 Section 4. ECONOMIC DEVELOPMENT DEPARTMENT--ADDITIONAL
25 POWERS.--Consistent with the provisions of the Statewide Economic Development
Finance Act, the department may:

A. acquire, whether by construction, purchase, gift or lease, and hold
fee simple title to or other interest in any project or project property;

B. enter into a lease of property in connection with any project or

1 project property;

2 C. sell, lease or otherwise dispose of any project property;

3 D. assign lease payments, rents and any other revenues derived from
4 a project to the authority pursuant to leases, mortgages or indentures securing
5 payment of the principal of, interest on and any other charges and expenses relating
6 to bonds issued by the authority;

7 E. make state in-lieu payments to a qualifying county, a local school
8 district and, if applicable, a qualifying municipality to offset the tax impact of a project;
9 and

10 F. coordinate with the authority:

11 (1) for the authority's provision of staffing support and
12 assistance in carrying out the department's responsibilities under the Statewide
13 Economic Development Finance Act; and

14 (2) to enter into memoranda of understanding or such other
15 agreements as the department and authority deem appropriate for such purposes.

16 Section 5. ADDITIONAL DUTIES OF THE ECONOMIC DEVELOPMENT
17 DEPARTMENT AND THE NEW MEXICO FINANCE AUTHORITY--OPT-IN
18 AGREEMENTS.--

19 A. For the purpose of recommending projects to the authority for
20 financing assistance, the department and the authority shall coordinate to:

21 (1) survey potential eligible entities and projects and provide
22 outreach services to local governments and eligible entities, for the purpose of
23 identifying and recommending projects to the authority for financing assistance;

24 (2) evaluate potential projects for suitability for financing
25 assistance;

(3) formulate recommendations of projects that are suitable for
financing assistance; and

(4) obtain input and information from the authority relevant to
the establishment and implementation of criteria for evaluating potential projects.

1 B. The department, with such staffing and other assistance from the
2 authority as the department may request, shall propose to enter into opt-in
3 agreements with counties, local school districts and municipalities for the purpose of
4 facilitating local government approvals necessary to permit projects to proceed. Opt-
5 in agreements shall provide:

6 (1) for project compliance with all applicable local land use
7 regulations;

8 (2) for payments in lieu of taxes to qualifying counties, local
9 school districts and, if applicable, qualifying municipalities to mitigate the tax impact of
10 a project;

11 (3) that financing assistance is conditioned upon compliance
12 with:

13 (a) all applicable ordinances, regulations and codes of
14 a local government concerning planning, zoning and development permitting; and

15 (b) such other requirements as the department and the
16 county, school district and municipality may agree to include;

17 (4) that the payments in lieu of taxes shall be distributed in a
18 manner and in amounts calculated in accordance with the provisions of Section 14 of
19 the Statewide Economic Development Finance Act; and

20 (5) that the county, school district or municipality reserves the
21 right to withdraw from the agreement if it determines that the project subject to the
22 agreement does not satisfy the requirements enumerated in the opt-in agreement.

23 C. The department shall adopt rules for the exercise of its powers and
24 responsibilities pursuant to the Statewide Economic Development Finance Act.

25 Section 6. NEW MEXICO FINANCE AUTHORITY--ADDITIONAL POWERS AND
DUTIES.--

A. Consistent with the provisions of the Statewide Economic
Development Finance Act, the authority may:

(1) issue economic development bonds, notes or other debt

1 instruments on behalf of an eligible entity, payable from the revenues of a project and
2 other revenues authorized as security for the bonds, to finance a project on behalf of
3 an eligible entity;

4 (2) enter into loan participation agreements on behalf of
5 eligible entities, whether in the form of an interest rate buy-down, the purchase of
6 loans originated and underwritten by third-party lenders or other similar arrangements;

7 (3) offer loan guarantees;

8 (4) make, enter into and enforce all contracts necessary,
9 convenient or desirable for purposes of the authority or pertaining to the other powers
10 granted pursuant to the Statewide Economic Development Finance Act;

11 (5) make and execute contracts for the origination,
12 administration, servicing or collection of any loan, and to pay the reasonable value of
13 services rendered to the authority pursuant to the contracts;

14 (6) fix, revise from time to time, charge and collect fees and
15 other charges in connection with the issuance of bonds; the making, purchase or
16 guaranty of loans; and any other services rendered by the authority;

17 (7) employ architects, engineers, accountants and attorneys;
18 construction and financial experts; and such other advisors, consultants and agents as
19 may be necessary in its judgment, and fix and pay their compensation;

20 (8) acquire fee simple, leasehold, mortgagor's or mortgagee's
21 interests in real or personal property and to sell, mortgage, convey, lease or assign
22 that property for authority purposes; and

23 (9) in the event of default by an eligible entity, enforce its rights
24 by suit, mandamus and all other remedies available under state law.

25 B. The authority shall adopt policies and procedures to:

(1) establish minimum credit qualifications for financing
assistance to eligible entities for projects recommended by the department;

(2) establish procedures for applying for financing assistance;

and

1 (3) establish fees to pay the costs of originating and
2 administering financing assistance.

3 C. The authority shall coordinate with the department to provide
4 staffing and other assistance to the department in carrying out the department's
5 responsibilities and activities pursuant to the Statewide Economic Development
6 Finance Act.

7 Section 7. ECONOMIC DEVELOPMENT BONDS.--

8 A. The authority may issue economic development bonds on behalf of
9 an eligible entity to provide funds for a project recommended by the department for
10 financing assistance. Bonds issued pursuant to the Statewide Economic Development
11 Finance Act shall not be a general obligation of the authority or the state within the
12 meaning of any provision of the constitution of New Mexico, and shall never give rise to
13 a pecuniary liability of the authority or the state or a charge against the general credit
14 or taxing powers of the state, and every bond issued pursuant to the Statewide
15 Economic Development Finance Act shall state that fact plainly on its face. Bonds
16 shall be payable from the revenue derived from a project being financed by the bonds
17 and from other revenues pledged by an eligible entity, and may be secured in such
18 manner as provided in the Statewide Economic Development Finance Act and as
19 deemed appropriate by the authority. Bonds may be executed and delivered at any
20 time, and from time to time, may be in such form and denominations, may be of such
21 tenor, may be payable in such installments and at such time or times not exceeding
22 thirty years from their date of delivery, may be payable at such place or places, may
23 bear interest at such rate or rates payable at such place or places and evidenced in
24 such manner and may contain such provisions not inconsistent with the Statewide
25 Economic Development Finance Act, all as shall be provided in the resolution and
proceedings of the authority authorizing issuance of the bonds. Bonds issued by the
authority pursuant to the Statewide Economic Development Finance Act may be sold
at public or private sale in such manner and from time to time as may be determined
by the authority to be most advantageous, and the authority may pay all expenses;

1 attorney, engineering and architect fees; premiums; and commissions that the
2 authority may deem necessary or advantageous in connection with the authorization,
3 sale and issuance of the bonds. All bonds issued pursuant to the Statewide Economic
4 Development Finance Act shall be construed to be negotiable.

5
6 B. The principal of and interest on bonds issued pursuant to the
7 Statewide Economic Development Finance Act shall be secured by a pledge of the
8 revenues of the project being financed with the proceeds of the bonds, may be
9 secured by a mortgage of all or any part of the project property being financed or
10 other collateral pledged by an eligible entity, and may be secured by the lease of such
11 project property, which collateral and lease may be assigned, in whole or in part, by
12 the department to the authority or to third parties to carry out the purposes of the
13 Statewide Economic Development Finance Act. The resolution of the authority
14 pursuant to which the bonds are authorized to be issued or any such mortgage may
15 contain any agreement and provisions customarily contained in instruments securing
16 bonds, including, without limiting the generality of the foregoing, provisions respecting
17 the fixing and collection of all revenues from any project to which the resolution or
18 mortgage pertains, the terms to be incorporated in the lease of the project property,
19 the maintenance and insurance of the project property, the creation and maintenance
20 of special funds from the revenues of the project and the rights and remedies
21 available in event of default to the bondholders or to the trustee under a mortgage, all
22 as the authority or the department shall deem advisable and as shall not be in conflict
23 with the Statewide Economic Development Finance Act; provided, however, that in
24 making any such agreements or provisions the authority and the department may
25 obligate themselves except with respect to the project and application of the revenues
therefrom, and except as expressly permitted by the Statewide Economic Development
Finance Act, and shall not have the power to incur a pecuniary liability or a charge, or
to pledge the general credit or taxing power of the state. The resolution authorizing
the issuance of bonds may provide procedures and remedies in the event of default in

1 payment of the principal of or interest on the bonds or in the performance of any
2 agreement. No breach of any such agreement shall impose any pecuniary liability
3 upon the authority, the department or the state or any charge against the general
4 credit or taxing powers of the state.

S
B
9
3
2
P
a
g
e
1
0

5 C. The authority may arrange for such other guarantees, insurance or
6 other credit enhancements or additional security provided by an eligible entity as the
7 authority may deem appropriate for the bonds and may provide for the payment of the
8 costs of the same from the proceeds of the bonds, or may require payment of the

9 D. Bonds issued to finance a project may also be secured by pledging
10 a portion of the qualifying municipal or county infrastructure gross receipts tax
11 revenues by the municipality or county in which the project is located, as permitted by
12 the Local Economic Development Act.

13 E. The bonds and the income from the bonds, all mortgages or other
14 instruments executed as security for the bonds, all lease agreements made pursuant
15 to the provisions hereof and revenue derived from any sale or lease of project
16 property shall be exempt from all taxation by the state or any political subdivision. The
17 authority may issue bonds the interest on which is exempt from taxation under federal
18 law.

19 F. In any calendar year, no more than fifteen percent of the state
20 ceiling allocated pursuant to the Private Activity Bond Act may be used for projects
21 financed with bonds issued pursuant to the Statewide Economic Development Finance
22 Act.

23 Section 8. LEASES OF PROJECT PROPERTY.--

24 A. Prior to the department's lease of any project property to an eligible
25 entity, the authority shall determine:

(1) the amount necessary in each year to pay the principal of
and interest on bonds proposed to be issued to finance the project;

(2) the amount necessary to be paid each year into any

1 reserve funds that the authority may deem advisable to establish in connection with
2 the retirement of the proposed bonds and the maintenance and repair of the project
3 property; and

4 (3) unless the terms under which the project property is to be
5 leased provide that the lessee shall maintain the project property and carry all proper
6 insurance with respect thereto, the estimated cost of maintaining the project property
in good repair and keeping it properly insured.

7 B. The determinations required by Subsection A of this section shall
8 be set forth in the resolution under which the proposed bonds are to be issued; and
9 prior to the issuance of the bonds, the department shall lease the project property to a
10 lessee or purchaser pursuant to an agreement conditioned upon completion of the
11 project and providing for payment to the department and assigned to the authority or a
trustee, of such rentals or payments as will be sufficient to:

12 (1) pay the principal of and interest on the bonds issued to
13 finance the project;

14 (2) build up and maintain any reserve deemed by the authority
15 to be advisable in connection with the bonds; and

16 (3) pay the costs of maintaining the project property in good
17 repair and keeping it properly insured, unless the lease obligates the lessee to pay for
18 the maintenance and insurance of the project property.

19 Section 9. REFUNDING BONDS.--

20 A. Outstanding economic development bonds may at any time and
21 from time to time be refunded by the authority by issuing its refunding bonds in such
22 amounts as the authority may determine to refund all or a portion of the principal of
23 the bonds, all unpaid accrued and unaccrued interest on the bonds to the normal
24 maturity date of such bonds or to selected prior redemption dates thereof, any
redemption premiums, any commission and all estimated costs incidental to the
issuance of such bonds and to such refunding as may be determined by the authority.

25 The principal amount of refunding bonds may be equal to, less than or greater than

S
B
9
3
2
P
a
g
e
1
1

1 the principal amount of the bonds to be refunded. Any such refunding may be
2 effected whether the bonds to be refunded have matured or will thereafter mature,
3 either by sale of the refunding bonds and the application of the proceeds thereof for
4 the payment of the bonds to be refunded thereby, or by exchange of the refunding
5 bonds for the bonds to be refunded thereby; provided that the holders of any bonds to
6 be refunded shall not be compelled without their consent to surrender their bonds for
7 payment or exchange prior to the date on which they are payable or, if they are called
8 for redemption, prior to the date on which they are by their terms subject to
9 redemption. Refunding bonds shall be payable from the revenues out of which other
10 bonds issued pursuant to the Statewide Economic Development Finance Act may be
11 payable or from the amounts derived from an escrow as provided in this section,
12 including amounts derived from the investment of refunding bond proceeds and other
13 legally available amounts also as provided in this section, or from any combination of
14 the foregoing sources, and may be secured in the manner that other bonds issued
15 pursuant to the Statewide Economic Development Finance Act may be secured.

S
B
9
3
2
P
a
g
e
1
2

14 B. Proceeds of refunding bonds shall either be applied immediately to
15 the retirement of the bonds being refunded or placed in escrow in a commercial bank
16 or trust company that possesses and is exercising trust powers. Notwithstanding any
17 other provision of law, the escrowed proceeds may be invested in short-term or long-
18 term securities. Except to the extent inconsistent with the express terms of the
19 Statewide Economic Development Finance Act, the resolution of the authority pursuant
20 to which the bonds to be refunded were issued, including any mortgage or trust
21 indenture securing the bonds, shall govern the establishment of any escrow in
22 connection with the refunding bonds and the investment or reinvestment of any
23 escrowed proceeds.

23 Section 10. USE OF BOND PROCEEDS.--The proceeds from the sale of
24 bonds issued pursuant to the Statewide Economic Development Finance Act shall be
25 applied only for the purpose for which the bonds were issued and cost related to the
acquisition of the project property. The cost of acquiring any project property shall

1 include the following:

2 A. the cost of the construction of any part of project property that may
3 be constructed, including architect, engineering and attorney fees;

4 B. the purchase price of any part of project property that may be
5 acquired by purchase;

6 C. the cost of the extension of any utility to the project site;

7 D. all expenses in connection with the authorization, sale and issuance
8 of the bonds; and

9 E. the interest on the bonds for a reasonable time prior to
10 construction, during construction and a reasonable time after completion of
11 construction.

12 Section 11. BONDS LEGAL INVESTMENTS.--Bonds issued pursuant to the
13 Statewide Economic Development Finance Act shall be legal investments for savings
14 banks and insurance companies organized under the laws of the state.

15 Section 12. LOAN PARTICIPATIONS.--The authority may purchase loans or
16 participations in loans to eligible entities by third-party lenders for projects
17 recommended by the department, in amounts and pursuant to such terms as the
18 authority deems appropriate pursuant to the authority's rules, where:

19 A. the third-party lender is responsible for the origination, underwriting,
20 servicing and administration of the loan; and

21 B. the portion of the loan purchased or underwritten by the authority is
22 secured by a lien on a parity with the lien obtained by the third-party lender in any
23 collateral, pursuant to which the authority's rights in such collateral may be exercised
24 on a pro-rata basis with the third-party lender's rights in the collateral.

25 Section 13. STATEWIDE LOAN PARTICIPATION FUND.--

 A. The "statewide loan participation fund" is created within the
authority. The fund shall be administered by the authority as a separate account and
may consist of such subaccounts as the authority deems necessary to carry out the
purposes of the fund. The authority may establish procedures for administering the

1 fund in accordance with the Statewide Economic Development Finance Act.

2 B. Except as otherwise provided in the Statewide Economic
3 Development Finance Act, money from payments of principal of and interest on loan
4 participations and other securities held by the authority for projects receiving financing
5 assistance based upon the department's recommendation shall be deposited in the
6 fund; provided that fees charged by the authority to pay the costs of originating and
7 administering loans, loan participations or loan guarantees for projects, other than
8 interest, shall not be deposited in the fund, but shall be deposited in a separate
9 account and may be used by the authority to meet its administrative costs.

10 C. Except as otherwise provided in the Statewide Economic
11 Development Finance Act, money in the fund is appropriated to the authority to pay
12 the reasonably necessary costs of originating and servicing loan participations, to
13 purchase loan participations and to purchase securities to assist eligible entities in
14 financing projects in accordance with the Statewide Economic Development Finance
15 Act and pursuant to the recommendation of each project by the department.

16 D. Money in the fund that is not needed for immediate disbursement,
17 including money held in reserve, may be deposited or invested in the same manner as
18 other funds administered by the authority.

19 E. Money on deposit in the fund may be designated as a reserve for
20 bonds issued by the authority pursuant to the Statewide Economic Development
21 Finance Act, including bonds payable from sources other than the fund, and the
22 authority may covenant in any bond resolution or trust indenture to maintain and
23 replenish the reserve from money deposited in the fund after issuance of bonds by the
24 authority.

25 F. Money in the fund may be used to purchase bonds issued by the
26 authority pursuant to the Statewide Economic Development Finance Act, which are
27 payable from any designated source of revenues or collateral. Purchasing and
28 holding the bonds shall not result in cancellation or merger of the bonds,
29 notwithstanding the fact that the authority as the issuer of the bonds is obligated to

1 make the required debt service payments and the fund held by the authority is entitled
2 to receive the required debt service payments. S
B

3 Section 14. TAX IMPACT FUND.-- 9

4 A. The "tax impact fund" is created within the state treasury. The fund 3
5 shall consist of money appropriated to the fund and money distributed to the fund by 2
6 law. Money remaining in the fund at the end of each fiscal year shall not revert, but P
7 shall remain in the fund for the purposes set forth in the Statewide Economic a
8 Development Finance Act. For the purpose of mitigating the tax impact of a project, g
9 money in the fund shall be disbursed by warrant of the department of finance and e
10 administration, upon vouchers submitted by the department, to qualifying counties, 1
11 school districts and, if applicable, qualifying municipalities as state in-lieu payments in 5
12 the same proportion as property taxes are distributed.

13 B. State in-lieu payments from the tax impact fund shall be made as a
14 portion of the total amount of the annual payment in lieu of taxes required in the opt-in
15 agreement. The amount of state in-lieu payments shall be determined by the
16 department, as specified in the opt-in agreement, and shall be subject to the
17 availability of money in the tax impact fund in each fiscal year during the term of the
18 opt-in agreement.

19 C. In each fiscal year during the term of an opt-in agreement, a
20 county, school district and, if applicable, a municipality shall qualify to receive state in-
21 lieu payments in connection with project property when the following conditions are
22 satisfied:

23 (1) title to project property has been transferred to the
24 department in connection with financing assistance provided pursuant to the Statewide
25 Economic Development Finance Act, resulting in an exemption from property taxes
that the qualifying county, local school district and, if applicable, qualifying municipality
would otherwise have been entitled to receive;

(2) pursuant to an opt-in agreement, the qualifying county,
local school district and, if applicable, qualifying municipality have certified to the

1 department in advance that it supports the project, subject to the project's compliance
2 with the planning, zoning, subdivision, building code and other applicable laws and
3 regulations governing land use;

4 (3) pursuant to an opt-in agreement, the county, the local
5 school district and, if applicable, the municipality and the department have agreed on
6 the amount of the annual payment in lieu of taxes; and

7 (4) the department has determined that there is sufficient
8 money on deposit in the tax impact fund in the current fiscal year to make distributions
9 of state in-lieu payments for the project.

10 D. The department shall establish by rule procedures for certification
11 by local governments concerning project support, notification of local school boards
12 concerning financing and qualification for state in-lieu payments.

13 E. The amount of state in-lieu payments that a qualifying county, local
14 school district and, if applicable, qualifying municipality are entitled to receive shall be
15 determined by the department based upon:

16 (1) the annual reduction in property tax revenue received by
17 the qualifying county, local school district and, if applicable, qualifying municipality that
18 results from the transfer of title to project property to the department;

19 (2) the increase in local revenues that the qualifying county,
20 local school district and, if applicable, qualifying municipality are anticipated to receive
21 as a result of the project;

22 (3) an allocation of the annual revenue deposited to the tax
23 impact fund among the qualifying municipalities and counties and local school districts
24 that have qualified to receive state in-lieu payments; and

25 (4) such adjustments as the department may determine by rule
are appropriate and necessary to carry out the purposes of the Statewide Economic
Development Finance Act, including, without limitation, adjustments that are necessary
or desirable to:

(a) overcome particular barriers to economic expansion

1 in specific locales;

2 (b) mitigate the tax impact of a project that will not be
3 offset by increased local gross receipts revenue production directly or indirectly
4 resulting from the project; or

5 (c) encourage job growth in an area in which
6 unemployment is a particular problem.

7 Section 15. CUMULATIVE AUTHORITY.--The Statewide Economic
8 Development Finance Act shall be deemed to provide an additional and alternative
9 method for the accomplishment of the things authorized by that act, shall be
10 interpreted as supplemental and additional to the powers conferred by other laws and
11 shall not be regarded as in derogation of any powers now existing; provided that the
12 issuance of bonds pursuant to the provisions of the Statewide Economic Development
13 Finance Act need not comply with the requirement of any other law applicable to the
14 issuance of bonds or notes.

15 Section 16. LIBERAL INTERPRETATION.--The Statewide Economic
16 Development Finance Act, being necessary for the welfare of the state and its
17 inhabitants, shall be liberally construed to effect the purposes thereof.

18 Section 17. Section 5-10-4 NMSA 1978 (being Laws 1993, Chapter 297,
19 Section 4, as amended) is amended to read:

20 "5-10-4. ECONOMIC DEVELOPMENT PROJECTS--RESTRICTIONS ON
21 PUBLIC EXPENDITURES OR PLEDGES OF CREDIT.--

22 A. No local or regional government shall provide public support for
23 economic development projects as permitted pursuant to Article 9, Section 14 of the
24 constitution of New Mexico except as provided in the Local Economic Development Act
25 or as otherwise permitted by law.

26 B. The total amount of public money expended and the value of credit
27 pledged in the fiscal year in which that money is expended by a local government for
28 economic development projects pursuant to Article 9, Section 14 of the constitution of

1 New Mexico and the Local Economic Development Act shall not exceed five percent of
2 the annual general fund expenditures of the local government in that fiscal year. The
3 limits of this subsection shall not apply to:

4 (1) the value of any land or building contributed to any project
5 pursuant to a project participation agreement;

6 (2) revenue generated through the imposition of the municipal
7 infrastructure gross receipts tax pursuant to the Municipal Local Option Gross
8 Receipts Taxes Act for furthering or implementing economic development plans and
9 projects as defined in the Local Economic Development Act or projects as defined in
10 the Statewide Economic Development Finance Act; provided that no more than the
11 greater of fifty thousand dollars (\$50,000) or ten percent of the revenue collected shall
12 be used for promotion and administration of or professional services contracts related
13 to the implementation of any such economic development plan adopted by the
14 governing body;

15 (3) revenue generated through the imposition of a county
16 infrastructure gross receipts tax pursuant to the County Local Option Gross Receipts
17 Taxes Act for furthering or implementing economic development plans and projects as
18 defined in the Local Economic Development Act or projects as defined in the Statewide
19 Economic Development Finance Act; provided that no more than the greater of fifty
20 thousand dollars (\$50,000) or ten percent of the revenue collected shall be used for
21 promotion and administration of or professional services contracts related to the
22 implementation of any such economic development plan adopted by the governing
23 body;

24 (4) the proceeds of a revenue bond issue to which municipal
25 infrastructure gross receipts tax revenue is pledged;

(5) the proceeds of a revenue bond issue to which county
infrastructure gross receipts tax revenue is pledged; or

(6) funds donated by private entities to be used for defraying
the cost of a project.

1 C. A regional or local government that generates revenue for
2 economic development projects to which the limits of Subsection B of this section do
3 not apply shall create an economic development fund into which such revenues shall
4 be deposited. The economic development fund and income from the economic
5 development fund shall be deposited as provided by law. Money in the economic
6 development fund may be expended only as provided in the Local Economic
7 Development Act or the Statewide Economic Development Finance Act."

S
B
9
3
2
P
a
g
e
1
9

7 Section 18. Section 7-19D-11 NMSA 1978 (being Laws 1991, Chapter 9,
8 Section 3, as amended) is amended to read:

9 "7-19D-11. MUNICIPAL INFRASTRUCTURE GROSS RECEIPTS
10 TAX--AUTHORITY BY MUNICIPALITY TO IMPOSE--ORDINANCE REQUIREMENTS--
11 ELECTION.--

12 A. A majority of the members of the governing body of a municipality
13 may enact an ordinance imposing an excise tax on any person engaging in business in
14 the municipality for the privilege of engaging in business. The rate of the tax shall not
15 exceed one-fourth of one percent of the gross receipts of the person engaging in
16 business and may be imposed in one-sixteenth of one percent increments by separate
17 ordinances. Any ordinance enacting any increment of the first one-eighth of one
18 percent of the tax is not subject to a referendum of any kind, notwithstanding any
19 requirement of any charter municipality, except that an increment that is imposed after
20 July 1, 1998 for economic development purposes set forth in Paragraph (5) of
21 Subsection C of this section shall be subject to a referendum as provided in
22 Subsection D of this section.

21 B. The tax imposed pursuant to Subsection A of this section may be
22 referred to as the "municipal infrastructure gross receipts tax".

23 C. The governing body of a municipality, at the time of enacting any
24 ordinance imposing the rate of the tax authorized in Subsection A of this section, may
25 dedicate the revenue for:

- (1) payment of special obligation bonds issued pursuant to a

1 revenue bond act;

2 (2) repair, replacement, construction or acquisition of

3 infrastructure improvements, including sanitary sewer lines, storm sewers and other

4 drainage improvements, water, water rights, water lines and utilities, streets, alleys,

5 rights of way, easements, international ports of entry and land within the municipality

6 or within the extraterritorial zone of the municipality;

7 (3) municipal general purposes;

8 (4) acquiring, constructing, extending, bettering, repairing or

9 otherwise improving or operating or maintaining public transit systems or regional

10 transit systems or authorities; and

11 (5) furthering or implementing economic development plans

12 and projects as defined in the Local Economic Development Act or projects as defined

13 in the Statewide Economic Development Finance Act, and use of not more than the

14 greater of fifty thousand dollars (\$50,000) or ten percent of the revenue collected for

15 promotion and administration of or professional services contracts related to

16 implementation of an economic development plan adopted by the governing body

17 pursuant to the Local Economic Development Act and in accordance with law.

18 D. An ordinance imposing any increment of the municipal

19 infrastructure gross receipts tax in excess of the first one-eighth of one percent or any

20 increment imposed after July 1, 1998 for economic development purposes set forth in

21 Paragraph (5) of Subsection C of this section shall not go into effect until after an

22 election is held and a majority of the voters of the municipality voting in the election

23 votes in favor of imposing the tax. The governing body shall adopt a resolution calling

24 for an election within seventy-five days of the date the ordinance is adopted on the

25 question of imposing the tax. The question shall be submitted to the voters of the

municipality as a separate question at a regular municipal election or at a special

election called for that purpose by the governing body. A special municipal election

shall be called, conducted and canvassed as provided in the Municipal Election Code.

If a majority of the voters voting on the question approves the ordinance imposing the

1 municipal infrastructure gross receipts tax, then the ordinance shall become effective
2 in accordance with the provisions of the Municipal Local Option Gross Receipts Taxes
3 Act. If the question of imposing the municipal infrastructure gross receipts tax fails, the
4 governing body shall not again propose the imposition of any increment of the tax in
5 excess of the first one-eighth of one percent for a period of one year from the date of
the election."

S
B
9
3
2
P
a
g
e
2
1

6 Section 19. Section 7-20E-19 NMSA 1978 (being Laws 1998, Chapter 90,
7 Section 7) is amended to read:

8 "7-20E-19. COUNTY INFRASTRUCTURE GROSS RECEIPTS TAX--
9 AUTHORITY TO IMPOSE RATE--USE OF FUNDS--ELECTION.--

10 A. The majority of the members of the governing body of a county may
11 enact an ordinance imposing an excise tax at a rate not to exceed one-eighth of one
12 percent of the gross receipts of any person engaging in business in the county area
13 for the privilege of engaging in business. The tax may be imposed in increments of
14 one-sixteenth of one percent not to exceed an aggregate rate of one-eighth of one
percent.

15 B. The tax imposed pursuant to Subsection A of this section may be
16 referred to as the "county infrastructure gross receipts tax".

17 C. The governing body, at the time of enacting an ordinance imposing
18 a rate of tax authorized in Subsection A of this section, may dedicate the revenue for:

19 (1) county general purposes;

20 (2) payment of gross receipts tax revenue bonds issued
pursuant to Chapter 4, Article 62 NMSA 1978;

21 (3) repair, replacement, construction or acquisition of any
22 county infrastructure improvements;

23 (4) acquisition, construction, operation or maintenance of solid
24 waste facilities, water facilities, wastewater facilities, sewer systems and related
facilities;

25 (5) acquiring, constructing, extending, bettering, repairing or

1 otherwise improving or operating or maintaining public transit systems or regional
2 transit systems or authorities; S
B

3 (6) planning, design, construction, equipping, maintenance or 9
4 operation of a county jail or juvenile detention facility; planning, assessment, design or 3
5 operation of a regional system of juvenile services, including secure detention and 2
6 nonsecure alternatives, that serves multiple contiguous counties; planning, design, P
7 construction, maintenance or operation of multipurpose regional adult jails or juvenile a
8 detention facilities; housing of county prisoners or juvenile offenders in any county jail g
9 or detention facility; or substance abuse, mental health or other programs for county e
10 prisoners or other inmates in county jails or for juvenile offenders in county or regional 2
11 detention facilities; and 2

12 (7) furthering or implementing economic development plans
13 and projects as defined in the Local Economic Development Act or projects as defined
14 in the Statewide Economic Development Finance Act, and use of not more than the
15 greater of fifty thousand dollars (\$50,000) or ten percent of the revenue collected for
16 promotion and administration of or professional services contracts related to
17 implementation of an economic development plan adopted by the governing body
18 pursuant to the Local Economic Development Act and in accordance with law.

19 D. An ordinance imposing the county infrastructure gross receipts tax
20 shall not go into effect until after an election is held and a majority of the voters in the
21 county area voting in the election votes in favor of imposing the tax. The governing
22 body shall adopt a resolution calling for an election within seventy-five days of the date
23 the ordinance is adopted on the question of imposing the tax. The question shall be
24 submitted to the voters of the county area as a separate question at a general election
25 or at a special election called for that purpose by the governing body. A special
election shall be called, conducted and canvassed in substantially the same manner
as provided by law for general elections. If a majority of the voters voting on the
question approves the ordinance imposing the county infrastructure gross receipts tax,
then the ordinance shall become effective in accordance with the provisions of the

1 County Local Option Gross Receipts Taxes Act. If the question of imposing the county
2 infrastructure gross receipts tax fails, the governing body shall not again propose the
3 imposition of the tax for a period of one year from the date of the election." SB 9

4 Section 20. Section 7-36-3 NMSA 1978 (being Laws 1975, Chapter 218,
5 Section 1, as amended) is amended to read: P 2

6 "7-36-3. INDUSTRIAL REVENUE BOND, POLLUTION CONTROL BOND AND
7 ECONOMIC DEVELOPMENT BOND PROJECT PROPERTY--TAX STATUS.-- 3

8 A. Property interests of a lessee in project property held under a lease
9 from a county or a municipality under authority of an industrial revenue bond or
10 pollution control revenue bond act or the Statewide Economic Development Finance
11 Act are exempt from property taxation for as long as there is an outstanding bonded
12 indebtedness under the terms of the revenue bonds issued for the acquisition of the
13 project property, but in no event for a period of more than thirty years from the date of
14 execution of the first lease of the project to the lessee by the county or municipality.

15 B. Property interests of a person, other than a public utility, arising out
16 of the purchase of a project authorized by the Industrial Revenue Bond Act, the
17 County Industrial Revenue Bond Act, the Pollution Control Revenue Bond Act or the
18 Statewide Economic Development Finance Act are exempt from property taxation for
19 as long as the project purchaser remains liable to the project seller for any part of the
20 purchase price, but not to exceed thirty years from the date of execution of the sale
21 agreement.

22 C. The exemptions from property taxation under Subsections A and B
23 of this section are not cumulative."

24 Section 21. Section 13-6-2 NMSA 1978 (being Laws 1979, Chapter 195,
25 Section 3, as amended by Laws 2001, Chapter 291, Section 9 and also by Laws 2001,
Chapter 317, Section 2) is amended to read:

"13-6-2. SALE OF PROPERTY BY STATE AGENCIES OR LOCAL PUBLIC
BODIES--AUTHORITY TO SELL OR DISPOSE OF PROPERTY--APPROVAL OF
APPROPRIATE APPROVAL AUTHORITY.--

1 A. Providing a written determination has been made, a state agency,
2 local public body, school district or state educational institution may sell or otherwise
3 dispose of real or tangible personal property belonging to the state agency, local
4 public body, school district or state educational institution. Disposal of real or tangible
5 personal property under this section shall be by negotiated sale or donation to an
6 Indian nation, tribe or pueblo in New Mexico or by negotiated sale or donation to other
7 state agencies, local public bodies, school districts or state educational institutions or
8 through the central purchasing office of the governmental entity by means of
9 competitive sealed bids or public auction or, if a state agency, through the federal
property assistance bureau of the general services department.

S
B
9
3
2
P
a
g
e
2
4

10 B. A state agency shall give the federal property assistance bureau of
11 the general services department the right of first refusal to dispose of tangible
12 personal property of the state agency. A school district may give the department the
13 right of first refusal to dispose of tangible personal property of the school district.

14 C. Except as provided in Section 13-6-2.1 NMSA 1978 requiring state
15 board of finance approval for certain transactions, sale or disposition of real or
16 tangible personal property having a current resale value of more than five thousand
17 dollars (\$5,000) may be made by a state agency, local public body, school district or
18 state educational institution if the sale or disposition has been approved by the state
19 budget division of the department of finance and administration for state agencies, the
20 local government division of the department of finance and administration for local
public bodies, the state department of public education for school districts and the
commission on higher education for state educational institutions.

21 D. Prior approval of the appropriate approval authority is not required
22 if the property is to be used as a trade-in or exchange pursuant to the provisions of
23 the Procurement Code.

24 E. The appropriate approval authority may condition the approval of
25 the sale or other disposition of real or tangible personal property upon the property
being offered for sale or donation to a state agency, local public body, school district

1 or state educational institution.

2 F. The appropriate approval authority may credit a payment received
3 from the sale of such real or tangible personal property to the governmental body
4 making the sale. The state agency, local public body, school district or state
5 educational institution may convey all or any interest in the real or tangible personal
6 property without warranty.

7 G. This section shall not apply to:

8 (1) computer software of a state agency;

9 (2) those institutions specifically enumerated in Article 12,
10 Section 11 of the constitution of New Mexico;

11 (3) the New Mexico state police division of the department of
12 public safety;

13 (4) the state land office or the state highway and transportation
14 department;

15 (5) property acquired by a museum through abandonment
16 procedures pursuant to the Abandoned Cultural Properties Act;

17 (6) leases of county hospitals with any person pursuant to the
18 Hospital Funding Act; and

19 (7) property acquired by the economic development
20 department pursuant to the Statewide Economic Development Finance Act."

21 Section 22. Section 13-6-2.1 NMSA 1978 (being Laws 1989, Chapter 380,
22 Section 1, as amended) is amended to read:

23 "13-6-2.1. SALES, TRADES OR LEASES--BOARD OF FINANCE APPROVAL.-

24 -

25 A. Except as provided in Section 13-6-3 NMSA 1978, for state
agencies, any sale, trade or lease for a period of more than five years of real property
belonging to a state agency, local public body or school district or any sale, trade or
lease of such real property for a consideration of more than twenty-five thousand
dollars (\$25,000) shall not be valid unless it is approved prior to its effective date by

S
B
9
3
2
P
a
g
e
2
5

1 the state board of finance.

2 B. The provisions of this section shall not be applicable as to those
3 institutions specifically enumerated in Article 12, Section 11 of the constitution of New
4 Mexico, the state land office, the state transportation commission or the economic
5 development department when disposing of property acquired pursuant to the
6 Statewide Economic Development Finance Act."

7 Section 23. Section 13-6-3 NMSA 1978 (being Laws 1961, Chapter 41,
8 Section 1, as amended) is amended to read:

9 "13-6-3. SALE, TRADE OR LEASE OF REAL PROPERTY BY STATE
10 AGENCIES--APPROVAL OF LEGISLATURE--EXCEPTIONS.--

11 A. Any sale, trade or lease for a period exceeding twenty-five years in
12 duration of real property belonging to any state agency, which sale, trade or lease
13 shall be for a consideration of one hundred thousand dollars (\$100,000) or more, shall
14 be subject to the ratification and approval of the state legislature prior to the sale,
15 trade or lease becoming effective. The provision specified in Section 13-6-2 NMSA
16 1978 requiring approval of the state budget division of the department of finance and
17 administration as a prerequisite to consummating such sales or dispositions of realty
18 shall not be applicable in instances wherein the consideration for the sale, trade or
19 lease shall be for a consideration of one hundred thousand dollars (\$100,000) or
20 more and wherein a state agency not specifically excepted by Subsection B of this
21 section is a contracting party, and, in every such instance, the legislature shall specify
22 its approval prior to the sale, trade or lease becoming effective.

23 B. The provisions of this section shall not be applicable as to those
24 institutions specifically enumerated in Article 12, Section 11 of the constitution of New
25 Mexico, the state land office, the state transportation commission or the economic
development department when disposing of property acquired pursuant to the
Statewide Economic Development Finance Act."

Section 24. Section 15-3B-2 NMSA 1978 (being Laws 1972, Chapter 74,
Section 2, as amended) is amended to read:

1 "15-3B-2. DEFINITIONS.--As used in the Property Control Act: S
2 A. "capital outlay project" means the acquisition, improvement, B
3 alteration or reconstruction of assets of a long-term character that are intended to 9
4 continue to be held or used, including land, buildings, machinery, furniture and 3
5 equipment. A "capital outlay project" includes all proposed expenditures related to the 2
6 entire undertaking; P
7 a
8 B. "department" means the general services department; g
9 C. "director" means the director of the division; e
10 D. "division" means the property control division of the department; 2
11 E. "jurisdiction" means all state buildings and land except those under 7
12 the control and management of the state armory board, the office of cultural affairs,
13 the state fair commission, the department of game and fish, the state highway and
14 transportation department, the commissioner of public lands, the state parks division
15 of the energy, minerals and natural resources department, the state institutions of
16 higher learning, the New Mexico school for the deaf, the New Mexico school for the
17 visually handicapped, the judicial branch, the legislative branch and property acquired
18 by the economic development department pursuant to the Statewide Economic
19 Development Finance Act; and
20 F. "secretary" means the secretary of general services."
21
22
23
24
25